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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,638	12/08/2000	Andreas Castan	10806-151	2602

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DINSMORE & SHOHL, LLP
1900 CHEMED CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202

EXAMINER

SISSON, BRADLEY L

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 11/14/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/732,638

Applicant(s)

CASTAN, ANDREAS

Examiner

Bradley L. Sisson

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

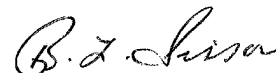
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-20 and 22-28.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet



Bradley L. Sisson
Primary Examiner
Art Unit: 1634

Continuation of 5. does NOT place the application in condition for allowance because: While agreement is reached in that Nakamura et al. (US Patent 5,912,113) does, in some embodiments, disclose culturing cells to where there is exhaustion of the carbon source, such step is performed so to establish what the feed rate should be so that a feed rate can be determined, thereby allowing for the artisan to culture cells in an environment where the concentration or relative availability of a carbon source does not fall below a given value. In support of this position attention is directed to the abstract, which teaches, "the carbon source concentration is maintained by measuring the carbon consumption in a preliminary experiment." Also, column 7, penultimate paragraph, teaches of performing feeding "continuously or intermittently." Clearly, if feeding is occurring continuously, there cannot be exhaustion of the carbon source. Further, by monitoring the level of oxygen and pH, as Nakamura et al., do teach, one is able to predict, and in fact monitor carbon source, or substrate levels. See column 6, first full paragraph, where it is taught "it is also possible to easily control the substrate concentration in the cultivation to the level as low as below 5 g/l, further below 3 g/l." It is further noted that the claimed method does not preclude that there never be a time when the substrate has been exhausted, nor does the presently claimed method limit or in any way characterize how one is to establish just what the feeding rate should be (analogous to Nakamura's "preliminary experiment."

Continuation of 10. Other: De Hollander et al. (US Patent 5,763,230) column 1, last paragraph, teaches that it is routine in fed-batch fermentations to avoid exhaustion by feeding of one or more essential nutrients to the culture. Lee (TIBTECH March 1996) teaches page 103, right column, that by monitoring the dissolved oxygen level, substrate concentration can be maintained.